

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALFRED H. BERGER)

Appearances:

For Appellant: Alfred H. berger,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code ~~from~~ the action of the Franchise Tax Board on the protest of Alfred H. Berger against a proposed assessment of additional personal ~~income~~ tax and penalties in the total amount of \$689.75 for the year 1978.

Appeal of Alfred H. Berger

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of additional personal income tax or in the penalties assessed for the year in issue.

On his California personal income tax return form 540 for the year 1978, appellant failed to disclose the required information regarding his income, deductions, or credits. In the space provided for this information, appellant entered the statement: "Object, self-incrimination." Respondent subsequently demanded that appellant file the required return. When appellant responded by simply citing his Fifth Amendment privilege against self-incrimination in support of his refusal to file a valid personal income tax return, the subject notice of proposed assessment was issued. The proposed assessment, which is based upon information obtained from appellant's employer, includes penalties for failure to file a return, failure to file upon notice and demand, and negligence.

It is well settled that respondent's determinations of tax are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

In support of his position, appellant contends that the assertion of his Fifth Amendment privilege against self-incrimination excuses his failure to file a return for the year in issue. This contention has repeatedly been rejected by the courts and this board. (See, e. g., United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); Appeal of Robert A. Skower, Cal. St. Bd. of Equal., Feb. 1, 1982.) There is no reason to reach a different conclusion in the instant appeal.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, and that the imposition of penalties was fully justified. Respondent's action in this matter will, therefore, be sustained.

Appeal of Alfred H. Berger

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Alfrea H. Berger against a proposed assessment of additional personal income tax and penalties in the total amount of \$689.75 for the year 1978, he and the same is hereby sustained.

Done at Sacramento, California this day 17th of November ,
1982, by the State Board of Equalization, with Board Members
Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr. Member

Richard Nevins, Member

_____, Member